
(1996) 01 GUJ CK 0035
In the Gujarat High Court

L.J. Kuvad

APPELLANT

Vs

Gujarat Electricity Board and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Citation : (1996) 3 GLR 665

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioner filed this writ petition in which a prayer has been made that the order dated 9th August 1982 at Annexure-A to the petition by which the petitioner was promoted at Vasavad or any consequential order passed be quashed. It is further prayed that the respondent be directed to accommodate the petitioner either at Jetpur or even at Dhoraji on the promotional post of Senior Assistant. A prayer for interim relief has been made which reads as follows:

(D) to issue an injunction restraining the 2nd respondent, his subordinates and servants and agents including respondent Nos. 3 and 4 from enforcing and implementing the said order Annexure-A so far as the petitioner is concerned and further not to relieve the petitioner from his post at Jetpur, pending hearing and final disposal of this petition;

2. The writ petition came up for admission before this Court on 17th February 1983 and a notice was issued and it has been ordered that the status quo to be maintained. On 23rd June 1983 Rule was issued and status quo was ordered to be continued.

3. The petitioner who was holding the post of Junior Clerk in the Gujarat Electricity Board was promoted to the post of Senior Assistant under the order dated 8th January 1982 and he was ordered to be posted at Vasavad. In the order dated August 9, 1982, it has been mentioned that the petitioner should take over the charge of the above post within 15 days from the date of receipt of

this order failing which the concerned promotee will be reverted to the lower grade as per G.S.O. 247 dated 22nd July 1973. The petitioner has not carried out this promotion order as he wanted promotion as well as the choice of posting. He has stated that he should have been given promotion on the newly created post at Jetpur itself but he was posted at Vasavad Sub-Division. He made the representation on 13th August 1982. Then again a personal representation dated 16th August 1982 was given. Though the petitioner did not join within the time but even then it is his admitted case that he was given an opportunity to join at Vasavad vide letter dated 23rd November 1982. Under the order dated 12th January 1983 the order of promotion by absorption of the petitioner on the higher post and his posting at Vasavad was cancelled and it has been ordered that he is reverted in the lower grade and his pay should be fixed in the cadre of Junior Assistant with effect from 9-8-1982. In pursuance of the order dated 12th January 1983 under the order dated 27th January 1983 his pay has been fixed on 9th August 1982 in the cadre of Junior Assistant. A copy of the order dated 12th January 1983 has been sent to the petitioner vide letter dated 18th January 1983. Shri Vaghela, M.H., Senior Assistant, had delivered the letter dated 12-1-1983 to the petitioner.

4. This petition is filed by the petitioner before this Court on 4th February 1983. This writ petition is opposed by the Electricity Board. Today, during the course of the arguments, learned Counsel appearing for the Board has placed certain documents after showing the same to the learned Counsel for the petitioner. The learned Counsel for the petitioner has also produced zerox copies of office orders dated 26-9-1988 and 15-10-1988. Under the order dated 26th September 1988 the petitioner was ordered to be promoted as Senior Assistant and posted at Jetpur. This promotion has been accepted by the petitioner. Under the Order dated 15th October 1988 which has been passed in pursuance of the order dated 26th September 1988 the pay of the petitioner was fixed in the pay scale of Rs. 1240-3260 which pay scale is of Senior Assistant. I fail to see any justification on the challenge of the petitioner to the order dated 9th August 1982. Under the order dated 9th August 1982 the petitioner was given the higher pay scale, i.e., scale of Senior Assistant and he was absorbed as a Senior Assistant. This order is a order beneficial to the petitioner but he has prayed for quashing of the same. How the petitioner is affected by this order or he can be said to be aggrieved by this order has not been made out by the Counsel for the petitioner. The petitioner only felt aggrieved by this order because he has been posted at Vasavad. When the petitioner himself had foregone the benefit of this promotion how it can be said to be a order prejudicial to the interest of the petitioner which warrants any interference of this Court. The petitioner cannot have order of promotion to the higher post may be by absorption as well as choice of place. The learned Counsel for the petitioner relying on the General Standing Order No. 247 dated 22-10-1973 argued that the petitioner should have posted at his present place of posting. I have gone through the G.S.O. No. 247. It provides a scheme for giving of the higher grade scale on completion of nine years service to the employees

who have not got promotion for no fault of his own on 1-8-1972 for want of clear vacancy or for want of channel of promotion or who has completed nine years services in the same cadre/post in a particular pay scale after 1-8-1972. The petitioner has been given the benefit of the said circular as it clearly borne out from the order dated 9-8-1982. Clause 7 of the aforesaid G.S.O. provides that each employee who takes the benefit of this Rule will have to give an undertaking in writing that he shall on his absorption against a regular post join the post at his place of posting. On his refusal to do so he shall forfeit the benefit of this order and he shall stand reverted to the original lower grade and he shall draw pay which he would have drawn had he not been given the benefit of the Rule. In case of an employee who is reverted to a lower post because he does not agree to join the place of posting, there should be no recovery of the amount already paid. I do not find any provision which justified the claim of the petitioner to have the promotion by absorption on the higher post at the place of his choice. The learned Counsel for the Board, Shri Pandya, has brought to the notice of this Court the Circular 231 dated 26th May 1985 wherein the demand of the Union that as far as possible the employees should be given posting in the same station or nearby was not accepted. It has been decided that the posting shall be given as per the vacancies. In view of these directions, no right whatsoever is conferred on the petitioner much less any legal right to claim his promotion by absorption on the higher post at the place of his choice. The petitioner has not carried out the order dated 9th August 1982. He has been given more opportunity by the Board even after expiry of the period of joining but he did not avail of it. As per G.S.O. 247, it is a case of refusal of the petitioner to accept the absorption on the higher post and as such the right of the petitioner stands forfeited. The petitioner has rightly been ordered to be reverted in the original lower grade and his salaries have rightly been fixed in the lower pay scale from 9-8-1982. I do not find any justification in the claim of the petitioner for the higher pay scale from 9-8-1982 and of the quashing of the order dated 27th January 1983 because, it is also the case where the petitioner has given in writing that he does agree to join at the place of posting. It is the case where the petitioner has disobeyed the orders of his superior authorities. The petitioner has considered himself superior to his superior officers. The posting of the petitioner cannot be at place of his choice. The petitioner in this writ petition has not challenged the consequent orders and rightly so. The petitioner was fully known of all subsequent orders. There is sufficient material which has been produced in the record by the respondent that the orders dated 27th January 1983 and order dated 12th January 1983 were served upon the petitioner. The petitioner has deliberately concealed the facts of passing of the order dated 12-1-1983. The petitioner has not come with clean hands before this Court. By concealing the material facts from this Court the petitioner has been able to get the interim order in his favour. This conduct itself is sufficient for dismissal of the writ petition. Even otherwise, the petitioner has no case. None of the legal or fundamental rights of the petitioner has been infringed. The petition is wholly misconceived. It is a case where the petitioner has not carried out the

lawful orders of his superior officers. Moverover, the petitioner has already been promoted to the higher post and has taken the benefits of the said post. Looking to the facts which are on the record as well as the fact that the petitioner has accepted the promotion which has been given to him at Jetpur after filing of this petition. The petitioner would have accepted the benefit of absorption on the higher post in case it is given at a particular place. The petitioner cannot put the Board to his own terms. If the matter is looked yet from other angle it would be apparent that it is a case where the petitioner has not come with clean hands before this Court and otherwise also he has challenged the order which confers benefits to him.

In the result, this writ petition fails. Rule is discharged with a cost of Rs. 2,000/-. Ad interim stay is vacated.